

REMARKS

This response addresses those issues raised in the Office Action mailed August 8, 2006. Applicant initially would like to thank the Examiner for the careful consideration given to this case and for indicating the withdrawal of the previously-lodged rejection. Through the following remarks, Applicant has addressed each and every issue raised by the Examiner in the Office Action. Applicant believes that each claim is in condition for final allowance, and prompt notice to such effect is respectfully requested. However, based on the length of time in which this application has pended and considering that the Examiner is using yet another new set of prior art (with little or no change to the original claims), Applicant respectfully requests an interview with both the Examiner and his supervisory (or Group Director) in order to prevent yet another new grounds for rejection that is not related to the claims at issue.

The Prosecution History and The Obviousness Rejection

As a preliminary matter, Applicant would like to discuss the history of the present prosecution in order to put the Examiner's most recent comments in perspective. The present utility application was filed on February 13, 2001 with 30 claims (device, system and method claims) directed generally to a portable authentication device. In the claims, the display was characterized as "an active display enabled for bistable performance." Such a display necessarily provides all of the advantages that were set forth throughout the specification of the application. This claimed display was not intended to include just any flat display imaginable, but required the display to be both active and bistable.

In the September 17, 2003 Office Action, the Examiner rejected the claims over U.S. Patent No. 5,748,737 to Daggar ("Daggar"). In the Office Action, the Examiner pointed to language in Daggar that it could be merely turned "on" and

“off.” The Examiner then argued that on/off are two different states and that this attribute constitutes a “bistable display.” On December 17, 2003, Applicant filed a Response which clearly pointed out that to one of skill in the display arts, a display that can be turned on/off is not a bistable display. In actuality, Applicant informed the Examiner, bistable performance for a display requires power only for updating the display and allows displayed information to be retained without a need for additional power. This is a common term in the display arts.

In the March 18, 2004 Office Action (a second Non-Final Office Action), the Examiner agreed that the Daggar rejection was improper, and withdrew it. In its place, the Examiner lodged a rejection based upon U.S. Patent No. 6,068,183 to Freeman (“Freeman”), citing two sections of Freeman as teaching “an active display enabled for bistable performance.” Applicant filed a Response on July 19, 2004 pointing out that the cited portions of Freeman do not teach an active display that has bistable performance. In fact, it was shown, Freeman’s use of row/column selector circuitry and other features teach that its described displays were all passive.

An Advisory Action was then sent dated August 26, 2004 stating that Applicant’s after-final response would not be entered. However, the case was not after final at that time (only two Non-Final Office Actions had been received). Applicants pointed this out to the Examiner in a September 27, 2004 Response, and the Examiner agreed that the Advisory Action was sent in error.

On March 30, 2005, the Examiner sent out yet another (third) Non-Final Office Action, now with the present Examiner involved in the case. In this Office Action, the Examiner again rejected the claims over Freeman, and the Examiner argued that Freeman does teach active displays (although the Examiner now focused on a different portion of Freeman). On September 7, 2005, Applicant responded and requested an interview for the case. Although Applicant still

believes that the claims at that time clearly distinguished over Freeman (for example, the suspended particle displays (“SPDs”) of Freeman are based on Brownian movement in a liquid suspension and cannot, by definition, be bistable), in order to move prosecution of this case forward, Applicant amended the display portion of the claims to now include “an active reflective bistable display.” Clearly, it was pointed out, the Freeman displays do not teach such a display. Freeman discloses only LCD displays that are transmissive or partially transmissive (i.e., transreflective), and SPDs and FEDs that are similarly constructed. Moreover, even if one or more of these displays could somehow be altered to produce an active reflective bistable display, there is simply no teaching or suggestion within Freeman (or any other reference) to make such an alteration. Without this teaching or suggestion, the rejection is improper. Applicants also demonstrated to the Examiner that the types of displays in Freeman were actually distinguished in the Background of the present specification as old prior art.

In the November 23, 2005 Office Action, the Examiner indicated that Applicant’s arguments were persuasive, and the Examiner withdrew the Freeman § 102 rejection (now agreeing that the Freeman displays are passive). However, the Examiner refused the requested telephonic interview on the grounds that a new rejection (now an “obviousness” rejection) based upon the combination of Freeman and U.S. Patent No. 6,819,310 to Huang (“Huang”) was asserted. The heart of this new rejection is that Freeman teaches all aspects of the claimed invention other than an “active reflective bistable display” and that Huang teaches such a display. However, the mere fact that separate parts of an invention exist separately does not form the proper basis of a § 103 rejection. In fact, Applicant has never asserted that he invented active reflective bistable displays; he did not. But he did invent a novel and non-obvious use for the displays that benefits from some of the unique attributes of these types of displays. In this case, the Examiner’s non-obviousness rejection is improper on its face because he has asserted no valid teaching or suggestion in either reference to combine the teachings of these two patents. In

fact, it is clear that Huang and Freeman teach away from each other, and that Huang itself would not be suitable for the Freeman invention, and (more importantly) would not work in the present invention either.

On March 22, 2006, Applicant's representative and the inventor, Roger Wood, held a telephonic interview with the Examiner in this case. During this interview, Applicant explained to the Examiner why the two cited prior art references, Freeman and Huang, do not teach or suggest the claimed invention either alone or in combination. These same arguments were presented to the Examiner in the form of a Preliminary Amendment dated May 25, 2006. In addition to the deficiencies in these references cited by the Examiner in the Office Action, Applicant pointed out additional deficiencies and teachings within these references themselves that counsel away from any combination of these references, including:

- the fact that the display described in Huang, as well as similar displays such as those developed by eInk and others (described in the Background of the Invention), have been around since long before the filing of Freeman and were specifically excluded by Freeman;
- that the Huang reference teaches away from the applications of the Freeman reference (which require portability) because the concept of portability did not even appear in the Huang prosecution until the filing of the Huang *utility* application – *after* the filing date of the present application; and
- finally, that the Huang display and driver circuitry would not even work with the Freeman invention as it is far too complicated and bulky to fit in a Freeman-style application.

Now, after going through four different combinations of misapplied prior art, and without amending any claim in any substantial regard, the Examiner has yet again set forth a new combination of prior art in an effort to render obvious claims that are clearly not. It appears evident to Applicant that the Examiner probably does not possess sufficient background and experience in the display arts to properly address the substance of this invention (as evidenced by the Examiner's statements that he needed to check with other Examiner's that are knowledgeable in this art during previous interviews). This lack of understanding is unfair to the Applicant and procedurally improper as the Applicant is continually forced to respond to arguments that are completely immaterial and would not be made by a practitioner in this industry. Moreover, after almost 6 years of prosecution, the Examiner is again "starting from scratch" with a completely new rejection based on new prior art, even though the claimed invention has not significantly changed since its inception.

At this point, Applicant sincerely and respectfully requests that they either be assigned to a different Examiner with experience in the pertinent active reflective bistable displays or that the Applicants be given the opportunity to interview the case with the Examiner's immediate supervisor or group director. Applicants asked for this same interview in a 2005 response and were summarily denied by the Examiner (seemingly without any authority to deny such a request). In spite of this, because the present rejection is so clearly improper on its face, Applicants will provide a detailed response thereto herein.

The Present § 103 Rejection

Initially, the Examiner acknowledged that Applicant's arguments made in the Preliminary Amendment of May 25, 2006 were persuasive. The Examiner couched these arguments as an "amendment," however the claims were not amended at all. Instead, Applicant pointed out the errors in the Examiner's

reasoning and application of the disparate art, and Applicant's position was found to be correct. However, the Examiner has now made a similar rejection, based on what is now a fourth different combination of prior art in an attempt to read the claims on the prior art. Unfortunately, this obviousness rejection is equally misplaced as the previous rejection, as set forth in detail below.

The Examiner rejected Claims 1-2, 5, 7-14, 17-21, 24-25, and 27-30 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,068,183 to Freeman et al. ("Freeman") and further in view of U.S. Patent 6,348,908 to Richley et al. ("Richley"). In view of the foregoing and following remarks, Applicant submits that the current obviousness rejection is improper on its face (a proper prima facie case has not been made), and the claims are in condition for final allowance.

The main Freeman display is an LCD which, for the wide variety of reasons detailed in every response in this prosecution (as acknowledged by the Examiner), does not render obvious the present claims. The alternative displays for use with Freeman are self-described beginning at column 6, line 32:

Other implementations [i.e., other than LCD] can include different display elements such as suspended particle displays or field emission displays. These display elements, however, *require a power source to display images*.

Therefore, Freeman only teaches or suggests the use of an LCD display (col. 6, line 12) or a display that requires a power source to display images (col. 6, 34), as with the Brownian movement described above. Nothing more; nothing less. Again, as agreed by the Examiner, neither of these types of displays teaches or suggests the claimed "active reflective bistable displays" of the present invention. Moreover, such active reflective bistable displays were in existence more than a decade before Freeman (as suggested in the present application's Background), and

Freeman specifically excluded such a display because it would not operate with the rest of the Freeman system. The Examiner, in the past and present, is merely searching for an example of an active reflective bistable display (which the Applicant does not dispute existed before the present invention was made) to combine with Freeman. However, Freeman itself counsels that such a combination is improper – there is simply no teaching or suggestion to support such a combination.

In the latest Office Action, the Examiner points to Richley and asserts that the connection between Richley and Freeman is based on the use of ambient light as a power source in Richley and that (purportedly) such an ambient light source would be preferred by Freeman. This “connection” simply has no basis in fact or the relevant art.

Bistable displays were known in the literature as early as 1974 (not just in 1998 when Richley applied a new energy source to them). Freeman had access to these displays and specifically excluded them as not being applicable to his invention. If it were obvious to use an active reflective bistable display, Freeman would have used one and these devices would have previously existed in real life. As it stands, these devices are only now beginning to exist (*see smartdisplayer.com* website as of 08/2006), many years after the filing of the present patent application.

Second, the present invention includes both internal and external power supplies. The suggestion by the Examiner that an external power supply is more “cumbersome” than an ambient power supply (as in Richley) in an application that requires communication with a central server (like Freeman) is simply unsupportable. An communications interface is necessary for Freeman to communicate with the central server, and it would be much easier to incorporate a separate or integral power interface that would power the device during data transfer. In reality, adding some sort of bulky ambient power supply to the

Freeman invention (if even possible) would in no way be preferred and would certainly not be less cumbersome. The Examiner has pointed to no supporting material, and certainly to no teaching or suggestion within Freeman, that such a combination would be preferred. Again, the Examiner here is simply combining an unrelated display into the Freeman device which specifically excludes such a display.

Third, Richley specifically describes “fixing customizable patterned electrodes to the display.” It’s simply impractical in both the Freeman methodology and in the present invention to have either the user or a dedicated technician in-place to change the electrodes present in the card device at the time of authentication to properly display the results of said authentication. This would be cumbersome (to say the least) and would obviously not be sought by Freeman, even if Freeman were looking for an additional display to incorporate into his invention. Again, the Richley reference specifically teaches away from the purported §103 combination.

Interview Request

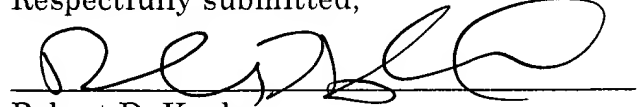
As stated above, Applicants feel that the Examiner is starting over from square one after 6 years of prosecution of this application. There is simply no basis for the presently asserted prior art combination, as the previous bases offered by the Examiner have been shown to be in error. As such, Applicants respectfully request a telephonic interview with the Examiner and his supervisor or Group Director in order to either allow for the reassignment of this case to an Examiner with more experience with active reflective bistable displays or to bring this case to a conclusion.

In view of the above claim amendments and remarks, it is believed that the present application is in condition for final allowance and notice to such

effect is respectfully requested. If the Examiner believes that additional issues need to be resolved before this application can be passed to issue, the undersigned invites the Examiner, through the attached request for interview, to contact him at the telephone number provided below.

Dated: February 8, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert D. Kucler', written over a horizontal line.

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